Order and Judgment of Foreclosure Appealed From.....6-13

At IAS Part 19 of the Supreme Court of the State of New York County of New York, at the Supreme Court Building, 60 Centre Street, New York, New York 10007, on the ____ day of _____ 1994.

FEB 09 1994

PRESENT:

Honorable Edward H. Lehman, Justice.

THE DIME SAVINGS BANK OF NEW YORK, FSB,	:	Index No. 20452/91
Plaintiff,	:	ORDER AND JUDGMENT OF FORECLOSURE AND SALE
– against –	:	
ANNE M. GLAVEY, THE BOARD OF MANAGERS OF THE HARDENBROOK HOUSE CONDOMINIUM,	:	
Defendants.	:	

On the summons, verified complaint, and notice of pendency of action all now duly filed in this action, and all proceedings thereon; and on the affidavits of service and notices of appearance now on file in this action, showing that each and every defendant herein has been properly served with the summons and verified complaint in this action, or has voluntarily appeared herein by their respective attorneys; and more than twenty days have elapsed since service upon all defendants was completed and since said defendants appeared, as aforesaid, defendants ANNE M. GLAVEY and THE BOARD OF MANAGERS OF THE HARDENBROOK CONDOMINIUM

(the "Board") answered the verified complaint, and that no other defendant has served an answer to the verified complaint and no defendant has moved with respect thereto, nor has their time been extended, and that due notice of the pendency of this action was duly filed in the office of the Clerk of the County of New York on August 28, 1991, on or after the time of filing the verified complaint and an order of summary judgment granting the relief demanded in the verified complaint and appointing a referee having been made by this Court on April 21, 1993, directing *inter alia*, the referee to compute the amount due to plaintiff upon the Mortgage, set forth in the verified complaint, and to examine and report whether or not the mortgaged premises can be sold in parcels, and a Referee's hearing having come on to be heard on August 4, 1993; upon the testimony and appearance of James Sherman of The Dime Savings Bank of New York, FSB, plaintiff herein, and after due deliberation thereon, and on reading and filing the report of Sylvan R. Novick, Esq., the referee named in the order, by which report, dated August 4, 1993, it appears that the sum of $159,150.28 was due thereon at the date of the report and that the mortgaged premises can be sold in one parcel without material injury to the parties interested, and that the whole amount secured by said Mortgage has become due; and upon Plaintiff's motion to confirm the Referee's Report and for Judgment of Foreclosure and Sale and upon Reading and Filing the Notice of Motion dated September 13, 1993 - Affidavit of Melanie Finkel sworn to September 13, 1993 and exhibits thereto in support. Defendant Glavey's Notice of Cross Motion to disqualify and remove Sylvan R. Novick as Referee dated October 1, 1993, the affirmation of Stephen Lotzman dated September 30, 1993 and exhibits thereto in support - the Affirmation of Stephen Lotzman dated October 4, 1993 and exhibits thereto in opposition to the motion - the Affirmation of Melanie Finkel dated October 5, 1993 and exhibit thereto in Reply and upon the Court's decision dated November 26, 1993 it is ordered that the Motion is granted, the Cross Motion is denied and the Report of the Referee is Confirmed and it is further

ORDERED AND ADJUDGED that the mortgaged premises described in the verified complaint in this action, as hereinafter set forth, be sold at public auction in one parcel by Sylvan R. Novick, Esq. who is hereby appointed referee for that purpose. That the referee give public notice of the time and place of such sale, according to law and rules and practice of this Court, by publishing the notice of sale in the New York Law Journal; that plaintiff or any other party to this action may become the purchaser or purchasers at such sale; that the referee execute to the purchaser or purchasers on such sale a deed of the premises sold; that the referee on receiving the proceeds of sale forthwith pay therefrom the taxes, assessments and water rents which are or may become liens on the premises at the time of sale; that the referee shall then deposit the balance of such proceeds of sale in his own name as referee in Bank Leumi New York Trust Co. and shall thereafter make the following payments, and his checks drawn for that purpose shall be paid by the said depository;

FIRST: The statutory fees of said referee, not to exceed TWO HUNDRED DOLLARS.

SECOND: Expenses of sale and advertising expenses as shown on the bills presented and certified by the referee to be correct.

THIRD: The referee shall also pay to plaintiff or its attorneys, the sum of ONE HUNDRED FIFTY NINE THOUSAND ONE HUNDRED FIFTY and 28/100 DOLLARS ($159,150.28) the amount so reported due as aforesaid and legal interest thereon from the date of the report plus any amount advanced and duly documented by plaintiff for real estate taxes for the premises being foreclosed since the date of the Referee's report or so much thereof as the purchase money of the mortgaged premises will pay same; take a receipt therefor, and file it with his report of sale.

FOURTH: If such referee intends to apply for a further allowance for his fees, he may leave upon deposit such amount as will cover such additional allowance to await the further order of this Court thereon after application duly made.

FIFTH: That in case plaintiff purchases the mortgaged premises at the sale, or in the event that the rights of the purchaser at the sale and the terms of sale under this judgment shall be assigned to and acquired by plaintiff, and a valid assignment thereof filed with the referee, the referee shall not require plaintiff to pay in cash the entire amount bid at the sale, but shall execute and deliver to plaintiff a deed or deeds of the premises sold upon the payment of the referee of the amounts specified above in items marked "FIRST" and "SECOND" and the amounts of the aforesaid taxes, assessments and water rents, and interest or penalties thereon; or in lieu of the payment of the last mentioned amounts upon filing with the referee receipts of the proper municipal authorities showing the payment thereof. That the balance of the amount bid, after deducting therefrom the aforesaid amounts paid by plaintiff for referee's fees, expenses of sale, and taxes, assessments and water rents, shall be allowed to plaintiff and applied by the referee upon the amounts due to plaintiff as specified above in the item marked "THIRD"; that if after so applying the balance of the amount bid, there shall be a surplus over and above the amounts due to plaintiff, plaintiff shall pay to the referee, upon delivery to it of the referee's deed, the amount of such surplus. That the referee on receiving the several amounts from plaintiff shall forthwith pay therefrom the taxes, assessments, water rents and interest or penalties thereon, unless the same have already been paid, and shall then deposit the balance in the depository as hereinafter directed.

SIXTH: That the referee take the receipt of plaintiff or its attorneys for the amounts paid as hereinabove directed in item marked "THIRD," and file it with his Report of Sale; that he deposit the surplus money, if any, with the Clerk of the Court within five days after the same shall be received and ascertainable, to the credit of this action, to be withdrawn only on an order signed by a Justice of the Court; that the referee make his report of such sale and file it with the Clerk of the County of New York with all convenient speed, that if the proceeds of the sale be insufficient to pay the amount so reported due to plaintiff, with the expenses of the sale, interest,

costs and allowance, as aforesaid, the referee shall specify the amount of such deficiency in his Report of Sale; and that the defendant ANNE M. GLAVEY pay to plaintiff the amount of any deficiency which may be fixed, determined and awarded by the Court on a subsequent application herein, and that the plaintiff have execution therefor; and that the purchaser or purchasers at such sale be let into possession on production of the referee's deed or deeds, and it is further

ORDERED, ADJUDGED AND DECREED, that each and all of the defendants in this action and all persons claiming through or under them, or any or either of them, after the filing of the notice of pendency of this action, be, and they are hereby forever barred and foreclosed of all right, claim, lien, title, interest and equity of redemption in the said mortgaged premises and each and every party thereof.

The following is a description of said mortgaged premises to be sold:

See Schedule "A" annexed.

SUBJECT to zoning restrictions and ordinances adopted by any municipal or other governmental authority, and any violations thereof; subject to any state of facts that an accurate survey would show; subject to covenants and restrictions, if any, insofar as they are now in force, contained in former deeds of record; subject to violations, if any, noted in any Federal, state or City agency having authority over the premises; and subject to the right of redemption of any municipal or governmental authority, if any.

ENTER

FILED
MAR 18, (1994)
COUNTY CLERK'S
OFFICE
NEW YORK

/s/
J.S.C.

/s/ Norman Goodman
CLERK

APPENDIX D

ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sections 2, 3 and 4 are omitted.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.